

HANDLE VIA [REDACTED]

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[REDACTED] 045-78

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Copy 1 of 5

29 August 1978

OGC Has Reviewed

MEMORANDUM FOR: Deputy Director for Administration

25X1A FROM : [REDACTED]
Associate General Counsel

SUBJECT : Authorization for Charitable Contribution
from Official Funds

25X1A REFERENCES : A. Cable - [REDACTED]
25X1A [REDACTED]

25X1A B. Cable - From SD/OEL [REDACTED]
25X1A [REDACTED]

C. Memo to DDA fm DDS&T, dtd
27 Apr 77, Same Subj.

25X1A 1. This Office has been asked to concur in the approval of the expenditure of Agency funds for a charitable contribution made by an OEL component [REDACTED]. Although the facts in the case strongly suggest that approval should be given on humanitarian grounds, this Office has been unable to find any legal authority for the Agency to make such a contribution. This does not necessarily mean that the expended funds must be reimbursed to the Agency. Although the officer who certified the expenditure of these funds is statutorily liable for an unauthorized expenditure, his account may be settled under prescribed guidelines without actual reimbursement. It should be noted that this action will merely forgive the debt owed by the certifying officer and in no way condones or gives tacit approval to further expenditures of this type.

25X1A 2. The charitable contribution in question was made by an overseas station following a massive natural disaster [REDACTED]. The events surrounding this expenditure are given below:

25X1A (a) [REDACTED] the station cabled Headquarters to advise of the various forms of assistance being extended to the disaster victims. It stated that many station personnel had contributed money and other aid on a personal basis. The message also pointed out

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that significant contributions were made by local government and private organizations; therefore, the station felt that it seemed appropriate that, in keeping with its standing in the community, it should participate in such an effort. It was proposed in the cable that Headquarters authorize the station to contribute official funds in the amount [REDACTED] (\$2,625 equivalent) to the relief fund. It further advised that the station intended to charge half the amount to operational entertainment and the remainder to an account to be identified later.

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(b) A cable from OEL on [REDACTED] granted permission to make the contribution and requested identification of the account to which the other half of the funds would be charged. The message also commended the station for its prompt response to the appeal.

(c) An audit of the station's accounts disclosed that the contribution was ultimately charged equally to operational entertainment and miscellaneous contractual services. The auditors questioned this assignment and stated that the donation was actually representational in nature and should have been charged to the U.S. \$3,000 representation allowance authorized for the Chief of Facility. The audit report acknowledged that this would have resulted in the allowance being exceeded by approximately \$2,400. The report also recommended that the entire matter be reviewed to ensure that the expenditure was appropriate and properly authorized.

The auditor's report raises two questions relating to the authority to expend Agency funds for charitable purposes: are such expenditures authorized to be made from appropriated funds, and, if not, are they authorized to be made from non-appropriated funds under the DDA's extraordinary authority given [REDACTED]

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3. Expenditure of appropriated funds is limited by statute:

Except as otherwise provided by law, sums appropriated for the various branches of expenditure in the public service shall be applied solely to the objects for which they are respectively made, and for no others. 31 U.S.C. §628.

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This statute has been interpreted by the Comptroller General to require that expenditures be limited to a particular object or to those expenses which are necessary or incident to the proper execution of that object. 50 Comp. Gen. 534(1971); 38 Comp. Gen. 782, 785(1959); 29 Comp. Gen. 419(1950). Therefore, for this expenditure to be proper, it must either correspond to a specific line item for charitable contributions, or the expenditures must be a necessary or incidental expense to some other line item. Examination of the facility's administrative or operational plans has failed to disclose any line item specifically earmarked for charitable contributions. The expenditure also fails to qualify as a necessary and incidental expense to other line items. As previously stated, the expenditure was originally charged against operational expenses and miscellaneous contract funds. Operational expenses, as defined [REDACTED]

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[REDACTED] are limited to expenditures incurred "(a) in connection with operational contact or (b) for the procurement of confidential information or special services or in the reasonable expectation thereof...." [REDACTED] further limited

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[REDACTED] It is the opinion of this Office that these expenditures were not in connection with operational contacts and were made with no reasonable expectation that intelligence benefits would arise therefrom; therefore they are not "necessary and incidental" to operational entertainment. As for the second category, since no contracts for services were entered into by the Agency, the expenditure cannot be a "necessary or incidental" expense to miscellaneous contract services.

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4. It has also been suggested that the contribution may be characterized as a representation expense, authorized [REDACTED]. The argument is presented that the contribution would enhance the standing of the station in the community and thereby enhance the prestige and interests of the United States. An expenditure to achieve this effect was apparently authorized [REDACTED] which stated:

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...there may be paid [on behalf of CIA personnel at posts abroad] or reimbursed to them reasonable and officially necessary expenses incurred for the enhancement of the prestige and interest of the United States.

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[REDACTED] rescinded [REDACTED] 6 June 77.

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However, this Office has ruled that this regulation was promulgated without statutory authority, and the Agency had no authority to make expenditures designed to "show the

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25X1A flag" unless the expenses were required by cover or operational objectives. See OGC 77-0341, 17 Jan 77, (following this memorandum [REDACTED] was amended to exclude the type of expenditure in question). Because this expenditure is not related to cover or operational objectives (see paragraph 3, supra) it cannot be characterized as a representation expense.

25X1A 5. Finally, it has been suggested that the expenditures may be authorized by the DDA under his authority to authorize unusual expenditures. This authority is given [REDACTED] which states:

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When authority is not otherwise specifically provided in Agency regulations, the Deputy Director for Administration will take final action on any matter arising out of the unusual functions of this Agency if the expenditure involved does not exceed \$5,000.

25X1A The key to this regulation is the phrase "arising out of the unusual functions of this Agency." Although a charitable contribution is indeed an unusual act by a Government agency, it cannot be said to arise out of the unusual functions of this Agency. Agency policy limits the use of this authority to cases arising out of CIA's intelligence and security functions. [REDACTED] As previously stated, the contribution does not arise out of these functions; therefore, the expenditure does not come within the purview [REDACTED]

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6. Lacking any allowable category under which to classify this expenditure, this Office must consider it to be unauthorized. The burden for accounting for such unauthorized expenditures falls on the officer who ultimately certified the payment of the contribution:

The officer or employee certifying a voucher shall be...held accountable for and required to make good to the United States the amount of any illegal, improper, or incorrect payment resulting from any false, inaccurate, or misleading certificate made by him, as well as for any payment prohibited by law or which did not represent a legal obligation under the appropriation or the fund involved. 18 U.S.C. § 82c.

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However, the statute does not require repayment in all cases, and allows discretionary relief to be given in cases where:

...the obligation was incurred in good faith, that the payment was not contrary to any statutory provision specifically prohibiting payments of the character involved, and that the United States has received value for such payment. 18 U.S.C. § 82c.

The evidence supplied to this Office indicates that relief may be granted in this case: the payment was made in good faith after approval by Headquarters, there are no known statutory provisions prohibiting charitable contributions, and the United States has apparently received the benefit of the increased goodwill of the local citizenry.

7. However, the question of forgiveness is not to be made by this Office, but by the General Accounting Office or the Agency Board of Review. Settlement of accounts for those activities arising out of normal administrative action is made through the GAO, while settlement of accounts arising out of covert activities is made through the Agency Board of Review. Since the circumstances of this case, especially the covert nature of the station involved, take it out of the normal administrative category, the question of settlement may be heard by the Agency Board. Procedures to be followed for requesting such a settlement are given [REDACTED]

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8. In summary, this Office has been unable to find any authority for the Agency to make an expenditure for the charitable contribution in question. This unauthorized expenditure gives rise to an obligation to repay this amount by the certifying officer who signed the voucher for payment. However, this Office also finds that the circumstances in this case may justify a settlement of this account, and accordingly, this matter should be submitted to the Agency Board of Review for its consideration.

9. If you have any questions concerning this matter, please contact the undersigned on extension 5648 or Red 1319.

[REDACTED]

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27 APR 1977

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MEMORANDUM FOR: Deputy Director for Administration
THROUGH : Office of General Counsel
SUBJECT : Authorization for Charitable Contribution from
Official Funds

1. This memorandum contains a recommendation in paragraph 4.

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2. The audit of the ██████████ Station for the period 1 March 1975 - 31 March 1976 raised a question in connection with a charitable contribution made from official funds. The circumstances follow:

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b. ██████████ the station cabled Headquarters to advise of the various forms of assistance being extended to the disaster victims. It stated that many station personnel had contributed money and other aid on a personal basis. The message also pointed out that significant contributions were made by local government and private organizations; therefore, it seemed appropriate that the station, in keeping with its standing in the community, should participate in such an effort. It was proposed in the cable that Headquarters authorize the station to contribute official funds in the amount ██████████ (\$2,625 equivalent) to the relief fund. It further advised that the station intended to charge half the amount to operational entertainment and the remainder to an account to be identified later.

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c. A cable from the Office of ELINT ██████████ granted permission to make the contribution and requested identification of the account to which the other half of the funds would be charged. The message also commended the station for its prompt response to the appeal.

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SUBJECT: Authorization for Charitable Contribution from Official Funds

d. The audit cited in paragraph 2 above pointed out that the contribution was ultimately charged equally to operational entertainment and miscellaneous contractual services. It also stated that the donation was actually representational in nature and should have been charged to the U.S. \$3,000 representation allowance authorized for the Chief of Facility. The audit report acknowledged that this would have resulted in the allowance being exceeded by approximately \$2,400. The report therefore also recommended that the Facility should request that Headquarters retroactively increase the FY 1975 representation allowance to cover the shortfall.

e. The Facility's reply to the audit report agreed that the donation may have been representational in nature, but since FY 1975 had expired some time ago, it would serve no useful purpose to adjust accounting entries at this late date.

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3. We are in complete agreement with the spirit and intent of the actions taken in connection with the contribution to the [REDACTED]. Indeed, it probably would have dealt a serious blow to our good relationships [REDACTED] if the Facility had not demonstrated its concern during this crisis. However, we also wish to ensure that these actions were appropriate and properly authorized. Our first concern was to determine that the expenditure was approved by the proper level of authority. We were unable to establish the existence of any precedent cases for similar type expenditures, and from our review of regulatory guidance, we concluded that our only recourse for approval was contained in the provisions [REDACTED]. The second issue dealt with the appropriate accounting entries in this situation. It appeared that an argument could be made for considering the donation as a representational expense; however, since representation authority is granted on an individual basis for specified expenditures of a somewhat individualized nature, a case could just as easily be made that the operational/liaison benefits reaped from the contribution were of a broad enough range to warrant the use of operational and/or management support funds.

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4. From the foregoing, we have concluded that [REDACTED] applies in the case of this unusual expenditure. Accordingly, it is recommended that you exercise that authority to approve the contribution of U.S. \$2,625 [REDACTED]

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SUBJECT: Authorization for Charitable Contribution from Official
Funds

Additionally, we submit that the accounting entries as presently recorded for this transaction are not improper and should remain unchanged. It would serve little or no purpose to retroactively make accounting adjustments at this late date and increase the representation allowance to accommodate the resulting shortfall.

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LESLIE C. DIRKS
Deputy Director
for
Science and Technology

CONCUR:

Office of General Counsel

APPROVED:

Deputy Director for Administration

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